

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

JOSEPH MILLER, individually and on behalf of his minor children attending an Amish school in Clymer and as a board member of that school; EZRA WENGERD, as representative of all Amish schools in the State of New York; JONAS SMUCKER, individually and on behalf of his minor children; DYGERT ROAD SCHOOL, PLEASANT VIEW SCHOOL a/k/a TWIN MOUNTAIN SCHOOL, SHADY LANE SCHOOL,

Plaintiffs,

-against-

DR. JAMES V. MCDONALD, in his official capacity as Commissioner of Health of the State of New York, and DR. BETTY A. ROSA, in her official capacity as Commissioner of Education of the State of New York,

Defendants.

Civil Action No. 1:23-cv-00484-EAW

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Members of the Amish faith “are religiously committed to living separately from the modern world. Maintaining that commitment is not easy. They grow their own food, tend their farms using pre-industrial equipment, and make their own clothes. In short, they lead lives of faith and self-reliance that have not altered in fundamentals for centuries.” *Mast v. Fillmore County*, 141 S. Ct. 2430, 2430 (2021) (internal quotations omitted). For the Amish, this “traditional way of life ... is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.” *Wisconsin v. Yoder*, 406 US 205, 216 (1972). Recognizing this traditional way of life, the Supreme Court has concluded the Amish are entitled to exceptions to mandatory educational laws and even to paying certain taxes. *Id.* at 216, 222.

Plaintiffs are all sincere adherents to the Amish belief system, which includes educating their children in the Amish way, with Amish teachers, in Amish schools, on Amish-owned property. Given their commitment to a century’s old way of life, it is hardly surprising that many Amish maintain profound religious objections to vaccines. As such, Plaintiffs, who run these Amish schools, do not require proof of vaccination from students to attend school. Their beliefs run contrary to New York Public Health Law § 2164 (the “**Compulsory Vaccination Law**”), which requires a school to refuse admission to a child who has not obtained the list of vaccines dictated by the State.

State authorities have refused to grant Plaintiffs a religious exemption to the Compulsory Vaccination Laws. Without that exemption, the State is barring the Amish children from attending their schools, and the New York Department of Health (“**DOH**”) recently levied crippling financial penalties against the Amish and their schools, with threats of considerably greater future fines.

The refusal to provide the Amish religious exemptions when the state readily provides discretionary secular medical exemptions is unconstitutional under the First Amendment's Free Exercise Clause. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In addition, the Compulsory Vaccination Law also violates Plaintiffs' rights to control the upbringing and education of their children, their free speech rights, and their rights to freedom of association.

FACTUAL BACKGROUND

Plaintiffs Dygert Road School, Pleasant View School a/k/a Twin Mountain School, and Shady Lane School are all Amish community schools that do not receive any public funding, are located within their respective Amish communities, and have been fined for refusing to require their students to be injected with products that violate the religious beliefs of the school administrators, the children attending the school, and the parents of those children. Dkt. 1 ¶ 8. The schools will imminently shutter their doors as the families who fund these schools cannot afford these fines, much less any impending substantial future fines, civil and other penalties, and resulting enforcement actions against their properties. *Id.*

Plaintiff Ezra Wengerd was elected by the Amish community as a representative of all Amish schools in the State to deal with issues with the State, and his role and function is to preserve and protect the religious beliefs of the Amish community, which have been fundamentally impinged by Defendants. *Id.* ¶ 9. Plaintiffs Jonas Smucker and Joe Miller are fathers of children who attend different Amish schools, and they are also both board members of their children's respective schools. *Id.* All Plaintiffs have sincerely held religious beliefs that preclude vaccination. *Id.* These religious beliefs have been substantially burdened by Defendants, who are demanding that Plaintiffs surrender their sincerely held religious beliefs against injecting these products or surrender their religious beliefs requiring group instruction of their children. *Id.*

New York law mandates that every parent or guardian have certain vaccines administered to their children. *See* N. Y. Pub. Health Law § 2164(2)(a). The statute prohibits school attendance absent receipt of these vaccines or a medical exemption granted at the discretion of a physician and subject to further review and approval from state authorities. *Id.* § 2164(5), (7), and (8). The statute defines “school” broadly to mean “any public, private or parochial ... school.” *Id.* § 2164(1)(a).

Even though they do not accept public funds, are run entirely by the Amish community, and are located on community property, the one-room parochial schools Plaintiffs’ children attend within the confines of their own community and without any state funding are still subject to New York’s statutory scheme. Dkt. 1 ¶ 18. This scheme precludes children from gathering to learn, pray, and receive a religious education in these one-room settings, but does not prohibit them from gathering in any other settings, including to play, attend church or barn raisings, or do communal chores. *Id.*

New York recognized a religious exemption until June 2019 when it repealed this exemption. *Id.* ¶ 19. Presently, forty-four states have legislation allowing school-age children to be exempt from mandatory vaccination laws for religious reasons, including the neighboring states of Pennsylvania, New Jersey, Vermont, and Massachusetts, and one other state was recently enjoined by a federal court to provide a religious exemption for the upcoming school year. *Id.* Surrounding states deal with an outbreak, if one were to ever occur, by permitting the health department to exclude unvaccinated children (those with both medical and/or religious

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**Pro hac vice*

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